AN

# ENQUIRY

INTO THE

NATURE and OBLIGATION

OF

# Legal Rights:

With Respect to the

## Popular Pleas

OF THE

Late K. JAMES's Remaining Right

TO THE

# CROWN.

LICENS'D.

*LONDON*,
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IT ſeems to me a needleſs Task to prove to Proteſtants, That it is more for their Spiritual and Temporal Intereſt, to have a Proteſtant than a Popiſh King and Queen; and therefore I cannot apprehend any great Danger to Their Majeſties Government, from thoſe Scandalous Libels which are writ with ſome Art, and diſperſed with greater Diligence, to raiſe and foment New Diſcontents. Thoſe are very ſanguine men, who hope to perſuade us, That our Liberties and Properties will be more ſecure, and that the Church of *England* will flouriſh better un-

der the Government of the late King if he return, than under the Government of King *William* and Queen *Mary*. We remember how it lately was, and we feel how it is at preſent; and if we can truſt our Memory and our Senſes, all the Wit of man cannot impoſe upon us in ſo plain a matter; and therefore I ſhall take it for granted, That the Argument from Intereſt ties the Subjects of *England* in the faſteſt Bonds of Duty and Allegiance to Their preſent Majeſties.

But the Laws of Juſtice and Righteouſneſs ought to have a greater Authority over Mankind, than all other Temporal Conſiderations; and at one time or other they will. And therefore while men are perſuaded, That how advantagious ſoever the late Revolution may prove, it is founded in Injuſtice, no other Argument but Force will for any long time be able to keep the late King out, or to eſtabliſh Their preſent Majeſties in the Throne. Which ſhews, That other Arguments are loſt labour, till the Diſpute of Right and Wrong is better cleared: And tho there have been many Wiſe things ſaid about it, it has not yet been ſtated to a General Satisfaction. The Government of the late King gave great reaſon to his Subjects to be willing to part with him, whenever he would ſet them at liberty; and therefore if King *James* hath ſuffered no Injuſtice, but what he has done himſelf; if he hath delivered his Subjects from their Allegiance; and if King *William* and Queen *Mary* are Legally Inveſted with the Royal Power, and are the Legal King and Queen of *England*, it will be no hard matter to make all men, who love the Peace and Proſperity,

rity, their Religion and the Liberties of their Countrey, to be easy and satisfied, and thankful for such a Change.

And to state this matter plainly, to silence this Pretence of Right and Justice on the late King's side, it will be necessary to enquire, What Right Princes have to their Thrones. This may at first be thought a Dangerous Enquiry, but it will appear to have no hurt in it; and the loud Clamours about *Right*, which disquiet so many mens minds, and disturb the Peace and Settlement of these Kingdoms, and daily threaten us with new Convulsions or Revolutions, make it absolutely necessary at this time to say some few plain Truths, which carry their own Evidence and Conviction with them, which will do no Wrong to Princes, and will do great Right to Subjects.

The whole Resolution of this matter depends upon one single Question, (if so plain a Case may be called a Question) *viz.* Whether Princes have a Natural, or only a Legal Right to their Thrones?

I think I might reasonably enough take it for granted without disputing, That no Prince has any other Right to his Throne, but what the Laws of the Land, or the Laws of Nations give him: For tho some men have disputed warmly for the Natural and Patriarchal Right of Kings, yet they have so few Followers, and the *Hypothesis* it self is so new, and built upon such uncertain Conjectures, and so contrary to plain Matter of Fact, and the universal practice of all Nations, that it is not worth any man's contending about; whoever has a mind to know the mystery of this, may read the

Second Dialogue of the *Bibliotheca Politica*, and try if he can make any thing of it.

For who knows what the Paternal and Patriarchal Authority was? Whether it were a Civil and Political, or only an Oeconomical Authority, such as Parents still have over their Children, or not much more? Who knows how this Authority descended, and what difference there was between the Authority of the Supreme Father, and of the immediate Fathers over their own Children? Whether this by Natural Right does not make the whole World one Monarchy under the Government of the Lineal Heir of the Eldest Family? And how came the World then, contrary to Natural Right, to be canton'd into so many Absolute and Independent Monarchies? Does not this damn all Republicks and Commonwealths as Usurpations upon the Natural Rights of Monarchy? For if the Natural Right of Government be in the Natural Heir, all other Forms of Government besides Monarchy, are contrary to Nature, and an Usurpation upon Natural Right.

But be all this as it will; Where is the Monarch this day in the world, that derives his Pedigree and Lineal Descent from some Ancient Pataiarch, who had this Natural Right of Government? Do we not know what the Original of many Monarchies hath been, and what Changes they have suffered? How Pirates and Robbers have advanced themselves to Royal Dignity, and founded New Kingdoms, and begun a Race of New Kings? And were all these the Lineal Heirs of those Kingdoms they subdued? And yet how can they have the Natural

Natural Patriarchal Right of Government without it? For Natural Rights can never be ſeparated from thoſe Natural Relations which create them.

Theſe are very great abſurdities; and yet I muſt do theſe men this right, that unleſs you can find a Paternal Patriarchal Right, there can be no Natural Right to Civil Government; for there is no other Natural Right of Government, but only the Natural Authority of Fathers: (For we are now ſpeaking of the Right to Government, not of the Nature and quality of it:) And therefore, though we ſhould grant that Kings ſucceed to the Paternal Authority, that they have now the ſame Authority over their Subjects, that Fathers anciently had over their Children (which I doubt, if truly ſtated, would ſatisfy but few Kings); yet it does not hence follow, that they have the ſame Natural Right to their Thrones, which Fathers have to their Authority. There may be ſeveral different Rights to the ſame kind of Authority; but he who is not in the Paternal Line, nor by Primogeniture inherits the Fathers right, cannot have a Natural Paternal Right.

For as for Natural deſcent in an Hereditary Monarchy, where the next lineal Heir ſucceeds to the Crown, whom we commonly ſtyle a Natural Prince, and a *Prince born*, who is the Natural Heir to the Crown which is his *Birth-right*: it is plain, this is not a Natural Right, but the Effect of Laws: For if this were the Right of Nature, then Elective Monarchies were a violation of the Rights of Nature; if it be a Natural Right for the next Heir to ſucceed his Father in the Kingdom, the next Heir of all Kings have the ſame Right; for the Rights of

Nature

Nature are equal and univerſal; and then it is contrary to Natural Right for any Subjects to own or elect any King but the Natural Heir: There muſt be in all Kingdoms the ſame Laws of Succeſſion, which now very much vary; there muſt be no difference between *Hereditary, Patrimonial and Elective Kingdoms*; For the next Lineal Heir by a *Natural Right* muſt always be King. It is certain the firſt King of every Family could have no Natural Right without recurring to an inviſible Patriarchal Authority; and if he had none, how could he tranſmit that Right to his Poſterity which he had not himſelf? But I ſhall urge this no farther, ſince the Wiſeſt men, even among the Aſſertors of K. J's. Authority, pretend to no more then a *Legal Right*.

Let us then in the next place conſider the nature of thoſe Legals Rights, eſpecially with reſpect to the Rights of Princes to their Thrones.

The whole Diſpute about Legal Rights (and the Rights of Princes to their Thrones, are no other then Legal Rights) muſt be reſolved into the Laws of the Land; and therefore we muſt conſider the nature, extent, and obligation of National Laws; for pure Legal Rights muſt of neceſſity be ſubject to all the changes, reſtrictions, limitations, diminutions, that Laws are; and here are ſo many things to be conſider'd, that it is hard to reduce them into method: But it will be moſt proper to begin with what immediately concerns the Late King's Right. I obſerve then;

1. That the Law is ſatisfied, when that is done which the Law requires to be done; and Subjects are

are no longer bound in Conſcience by that Law, when they have anſwer'd its demands. Thus the Law of Succeſſion is ſatisfied, when the next Lineal Heir is placed on the Throne; and when Subjects have done this, they can never more be charged with denying him his Right of Inheritance, when they have actually given it him: This was the caſe of K. J though his Proteſtant Subjects had too juſt apprehenſions of a Popiſh Prince, yet they ſet the Crown upon his head with all the uſual Solemnities, and own'd and recogniz'd him for their King with all the Formalities of Law. So that the Subjects of *England* never denied, nor do they to this day, *James* the Second's Hereditary Right to the Crown; they own'd and gave him his Right, and he had it, if he would have kept it; and this anſwered the Law of *Succeſſion* to the full; but if the King will leave his Throne, and make it *Vacant*, the Law of Succeſſion does not oblige Subjects to give him his Throne again, but to fill the Vacant Throne with the next Heir. The caſe of *Edward* the 4*th*, and *Charles* the 2*d*. was very different: They were the undoubted Heirs to the Crown by a Lineal Succeſſion, and were unjuſtly kept from their Right, and therefore Subjects were bound to do them Right by placing them on the Throne: But the Queſtion is not, and never was, Whether K. J. were the Rightful Heir, but whether he ſtill be *the Legal and Rightful* King, to whom our *Allegiance* is due; and his being once the Right Heir, does not prove that he is now the Legal and Rightful King, or that he has any Right to be ſo again. If he hath no Right but only by Law, I never could find or hear of any

Law

Law which gives him any Right to reſume what he thought fit once to quit and renounce; and conſequently the Subjects of *England* deny him no Right, in denying to reſtore him to his Abdicated Throne: and then the Diſpute of Right and Juſtice is out of doors as to this matter, as far as the Right of Succeſſion is concerned.

2*dly*. All Legal Rights are ſubject to ſome Legal Judgment, or definitive Declaration, and muſt be determined by it; and ſuch a Judgment is the rule and reſolution of Conſcience, as to ſuch adjudged Caſes. For we have no other rule in matters of Law, but a Legal Judgment, or Sentence, and our Obedience to Government requires us to acquieſce in ſuch a Judgment, as is pronounced by a legal and competent Authority: So that *to govern and to judge muſt belong to the ſame Authority*; as far as I am bound to obey any man, I muſt follow his Judgment and not my own; eſpecially when this judgment is pronounced by the laſt Judicature, from whence lies no appeal. Let us then apply this to our preſent caſe.

The late King withdrew his Perſon and Authority, and left us without any proviſion for, or face of Government: The Eſtates of the Realm Aſſemble upon this great occaſion; adjudge this to be an *Abdication* and *Deſertion* of the Government, and declare the Throne *Vacant*, and fill it with their Preſent Majeſties: And the Queſtion now is, Whether this be not ſuch a Legal and Deciſive Judgment as all the Subjects of *England* ought to acquieſce in? If the Diſputes about Legal Rights muſt be decided by Law, not by the Sword, (which is not the deciſion

ciſion of Civil Authority, but of Force), the ſentence of competent Judges muſt end the Diſpute; and if the Eſtates of the Realm be not the proper and legal Judges of ſuch Diſputes as concern the Right to the Crown, there can be none; and if they be, Subjects muſt acquieſce in their Judgment, or it is all one as if there had been none; for if men may pretend Conſcience, and adhere to their own private Opinions, in contradiction to the definitive Sentence of the laſt and ſole Judges, the Diſpute muſt end in Blows, which is contrary to the Reaſon and Nature of humane Societies, which were inſtituted to prevent Wars, and to end all Controverſies by a legal Judgment without the Sword.

I deny not but there may be great Injuſtice done by Corrupt, or Ignorant Judges; and the Law has made the beſt proviſion it can againſt this, by allowing appeals from Inferior to Superior Courts: But if the higheſt Authority, from whence lies no Appeal, happens to judge wrong, there is no remedy but to bear it patiently. We are not bound indeed to think that right, which we know to be wrong; but we are bound to acquieſce in it to all the intents and purpoſes of Law, as much as if we did believe it right. And as hard as this may ſometimes prove, there is the ſame neceſſity for this, that there is for Laws and Civil Authority; all Legal Rights are held by this tenure, to be ſubject to a Legal judgment and determination, and though ſome men may ſuffer by a wrong judgment, it is much better to oblige them to acquieſce under it, than by leaving them a right to diſpute it, to endanger the bringing the whole into a ſtate of Anarchy and War. Civil Authority will compel private

men to ſubmit to its deciſions, whether they think them right or wrong; and in all caſes where men are bound to ſubmit to Authority, they are bound to ſubmit to the publick Judgment. So that whatever Right ſome men may think K. *J.* has, it is not a Right in Law, becauſe by Law it is determined againſt him; or whatever Right in Law he may ſtill be thought to have, it is not ſuch a Right as can affect the Conſciences of Subjects; for the laſt definitive Sentence is the concluding judgment of the Law, and the rule of our Actions, as far as Law is our Rule. Whether this judgement is thought right or wrong by private men, the late K. has no remedy by Law, for the Sword is not Law; and though Subjects are bound by their Oaths of Allegiance to defend their King, his Crown and Dignity, againſt unjuſt force and violence, they are not bound to Reſtore him againſt Law; for I deſire any man to tell me by what Law Subjects are bound to oppoſe Force in any caſe againſt the laſt and final determinations of Law. For Force oppoſed to Law, as far as it reaches, is a diſſolution of Civil Government. It is abſurd to think that any Civil Conſtitution ſhould allow an appeal to the Sword, againſt the judgment and ſentence of the laſt Authority; and therefore when the Controverſy is brought to the laſt appeal, this is all the Law can do, and thoſe who will be governed by Laws muſt acquieſce in it; and thoſe who will go farther muſt not pretend to Laws, and Legal Rights. Nor is this to ſet up an Authority, Superior to Kings, which when the King is on the Throne in actual Ad-

Adminiſtration of the Government, is a contradiction to the notion of a Sovereign Authority; but it only makes the Eſtates the ſole Judges of all Diſputes concerning the Crown, when there is no Monarch actually in the Throne: thus they always have been in *England*, and thus of neceſſity they muſt be, if ſuch matters as theſe are ſubject to the declaration and definitive ſentence of a Legal Authority: And this can never prove dangerous to Kings while they keep their Thrones.

3*dly*. A Legal Inveſtiture and Poſſeſſion is a good Right in Law againſt all other titles and claims, till it be condemned and reverſed. This is ſo notoriouſly known, that it needs not be proved: The moſt unjuſt Poſſeſſor muſt not be diſpoſſeſſed by force under a Civil Government, till the wrong do ſome way appear before a proper Court, or the Law has given judgment againſt him; much leſs when a man has gotten poſſeſſion by a Legal ſentence, though upon falſe ſuggeſtions, and by an erroneous judgment of the Court. Such a Legal Poſſeſſion gives as great Authority to all his Acts, till the Sentence is reverſed, as it would do to the Acts of the moſt Rightful Poſſeſſor: Tenants, though they are ſatisfied he has no Right, muſt Pay their Rent to him, and may do it without any ſcruple of Conſcience, becauſe the Law has given it him, which is their Rule: And are obliged, and may be compelled, to do all Duties and Services, as to the moſt Rightful Landlord.

And thus it is in places of Truſt and Civil Authority. The Legal Return of a Member for Parliament, whatever diſpute there may be about the

truth of his Election, gives the Person so returned, a Right to sit in the House of Commons, and his Vote is as good as any Members there, till his Election be pronounced Void. Thus whatever dispute there may be about a *Mayor*, an *Alderman*, a *Sheriff*, a *Chamberlain*, of any City, or Corporation, (as we know it lately happened in *London*); he, who is invested with the customary Solemnities in the Office, is for the time the Legal Mayor, or Alderman, and all his Acts are Valid and Legal, till it be adjudged against him; and all Citizens, even those who think him not rightly Elected, are bound to pay him all that Duty which belongs to his Place and Office. And there is great and necessary reason for this to prevent the interruptions of Government, which are a greater mischief to any Society, than to be Governed by one, who has not a rightful claim to Government. And this reason holds much stronger, as to the Supreme and Regal Power: for if a King who is Legally invested with the Royal Authority, who is placed upon the Throne by the Estates of the Realm with all the accustomed Rites and Ceremonies of Law, must not be owned and obeyed as the Legal King, when there is no other visible Authority, the Government is at an end, as far as such men can put an end to it; especially when there is no appeal from that Authority which placed him on the Throne, but only to the Sword. Such a Legal Investiture by the Supreme Authority of the Nation, is a Legal Determination of his Right, That whatever other Claims and Titles there may be, they judge his the best; which must be final to Subjects,

jects, who will be governed by Laws; and those who will not submit to it, must talk no more of Laws, for the Law is against them, even the Fundamental Law of all Civil Societies, to be determined by the last and highest Authority, from whence lies no Appeal.

He then is the Legal King, who is placed on the Throne by a Legal Authority; and all Legal Obedience and Allegiance is due to him. The Law of *England* knows no other Legal King but him: My Lord Chief Justice *Cooke*, and other great Lawyers agree, That the Statute of Treason, 25 *Edw.* 3. relates only to a King thus Legally possessed of the Throne; and indeed it cannot be thought it should mean any other, since there was no other Notion of a King, when that Statute was made, but he who was Actually and Legally possessed of the Crown; for the distinction between a King *de jure* and a King *de facto*, was not heard of till *Edw.* 4. tho there had been many Kings before that time, who ascended the Throne without the Title of a Lineal Succession; and it was a great deal too soon to broach such a Distinction then, unless they had a mind to allow private Subjects to judge of Princes Titles, against the Publick and National Judgment, and against the Authority of National Acts: Whereas Legal Titles in all other Cases are not regarded in Law, till they are Legally declared; and with much more reason ought to be so, when the Title is of so high a nature, as a Challenge of the Crown.

Before this time, all Kings who were advanc'd to the Throne with the general Submission of the People, were esteem'd equally Legal and Rightful Kings,

as

as to all the effects of Law: And we may obſerve in all our Hiſtories, That no King who was ever Crowned by the People, was ever wholly deſerted or depoſed for want of Title. The Diſputes of *William* the 2*d*. and *Henry* the 1*ſt*. with their Elder Brother *Robert*, were accommodated between them by ſome Great Men: So was the Diſpute between King *Stephen* and *Henry* the 2*d*. which was ratified by the Parliament at *Wincheſter*: Nay, ſo was the Diſpute between *H*. 6. and the Duke of *York*, who challeng'd the Crown in Parliament; but how clear ſoever the Duke's Title was, the Lords would not allow, that the King ſhould be diveſted of his Royal Dignity, but that he ſhould keep it for his life: And after this Diſtinction was ſtarted, they found it of ſuch miſchievous Conſequence to the Subject, whenever the Right to the Crown was diſputed by the Sword, that in the Reign of *H*. 7. there was expreſs proviſion made againſt it by Act of Parliament, declaring the Allegiance of the Subject to be due to the King for the time being, that is, to the King who was poſſeſſed of the Throne by the publick Judgment and Act of the State; and that no Subject ſhould ſuffer for ſerving ſuch a King in his Wars, according to their Duty of Allegiance, neither at Home or Abroad.

This gives a plain Anſwer to the Book entituled, *The Caſe of Allegiance to a King in Poſſeſſion*: That Author thinks it a Demonſtration againſt my Lord Chief Juſtice *Cooke*, That the Statute of Treaſon cannot mean a King in Poſſeſſion without a Legal Title, becauſe it is unreaſonable to think, that the Law ſhould mean any King, but one who is King by Law; which is moſt certainly true; but then it is not merely a Legal

gal Title, but a Legal Inveſtiture and Recognition, that makes a Legal King, or a King in Law, as it makes a Legal Magiſtrate: And then all Kings *de facto*, who are placed in the Throne by a Legal Authority, and with all Legal and accuſtomed Ceremonies, are not only Legal Kings, but the only Kings that the Law allows to be Kings.

His other Argument is againſt the Authority of the Laws, ſuppoſing they did allow any ſuch thing; for he ſays it would be a wicked and unjuſt Law to eſtabliſh a Prince in the Throne, who has no Right to it; and to juſtify Subjects in fighting for ſuch a King, tho it ſhould happen to be againſt their Right and Lawful Sovereign: Which is a very abſurd Argument, if Princes have no Natural, but only a Legal Right to their Thrones; for all Legal Rights muſt be ſubject to a Legal Judgment; and a Legal Poſſeſſion is a Right in Law, againſt all Force: For the Civil Sword is always on the ſide of him that is in Poſſeſſion under a Legal Determination, whatever his Title be: And certainly there is as much reaſon the Sword ſhould defend the Legal Poſſeſſor of the Throne, as the Legal Poſſeſſor of Lands and Houſes: And I would ask this Author, ſuppoſing he were Sheriff of a County, whether he would make any ſcruple of Conſcience, to defend him who was poſſeſs'd of an Eſtate under a Legal Recovery or Proceſs, againſt a violent Intruder, tho he knew or did verily believe him to be the right Heir? Or whether Inferior Magiſtrates, who are to execute the Sentence of Superior Courts, are bound in Conſcience to execute no Sentence, but what they themſelves believe to be juſt? If this be admitted, Civil Authority is at an end,

end, and all the Courts in *Weſtminſter* Hall are of little uſe: And yet if it be lawful, nay, if it be abſolutely neceſſary in Civil Societies, in ſuch caſes as theſe to defend a Legal Poſſeſſion againſt a preſumed Right, then the Law may very juſtly require us to defend a King, as well as Subjects, in his Legal Poſſeſſion, againſt all other Rights and Claims; and if the Laws are the meaſures of Civil Obedience, Subjects may very juſtly and with a very good Conſcience do it. Which juſtifies what ſome have aſſerted, That ſuch Legal Rights as theſe are not concern'd in the diſpute of Allegiance againſt a Legal Poſſeſſor of the Throne; for a Legal Poſſeſſion and Inveſtiture is the only Legal *Thorough Settlement* of the Government; and this ſhows how much this Author is miſtaken, when with reference to this Controverſy he diſputes ſo warmly, that God himſelf cannot make it lawful for us to oppoſe Right, no more than he can make Right to be wrong; which is true with reſpect to pure Natural or Moral Rights, but does not hold in meer Legal Rights, which are as to any effects of Law eſteemed of no value againſt a Poſſeſſion, till they are judicially declared: And 'tis not the proper buſineſs of any private Subject to judge concerning them.

But the truth is, this Author looks upon the Rights of Kings not to be mere Legal Rights (which are Rights no longer, and in no other manner, than the Law allows them to be Rights), but ſuch Natural Unchangeable Rights as Parents have to the Government of their Children, nay, as God himſelf has to the Government of the World. For he thinks men may as well worſhip *gods de facto*, (ſuch as the *Pagan* Deities were, when they had got Poſſeſſion of the Temples

Temples and Altars), as pay their Allegiance to a King *de facto*, when he is poſſeſs'd of the Throne; which is not more Prophane than Weak; unleſs he thinks that the Law can make a God, as it can make a King; or that Kings are as much by Nature Kings, as God is God. This, by the way, is a ſhort but full Confutation of thoſe two large Pamphlets, *The Caſe of Allegiance to a King in Poſſeſſion*; and, *The Defence of the Caſe*. For all that the Author ſays to any purpoſe, is reſolved into one of theſe two Principles, That the Law owns no King, but him who has the Legal Title; and, That Kings have a Right to their Crowns ſuperior to Laws, and which obliges Subjects againſt a Legal Judgment, and a Legal Poſſeſſion; if theſe Principles fail him, all the reſt muſt fall to the Ground: And whether theſe be true or falſe, I appeal to what has been already ſaid.

4*thly*. As a neceſſary Conſequence and Juſtification of this, I obſerve, That a Legal Title to the Crown, and a Legal Authority to adminiſter the Government, may be ſeparated: That he who has the Title, may not have the Legal Authority, nor be the Legal King; and he may be the Legal King, and have the Legal Authority, who has not an Antecedent Title. This is paſt all Controverſy, if what I have already ſaid be true, That a Legal Inveſtiture and Poſſeſſion is a good Right in Law againſt all other Titles and Claims.

It may poſſibly appear a Myſtery to ſome men, how there ſhould be two ſuch contrary

Legal Rights; A Legal Right and Title to the Crown, without a Right to exerciſe the Authority belonging to the Crown; And a Legal Right to wear the Crown, and exerciſe the Authority belonging to it, without an Antecedent Legal Right to the Crown it ſelf; but whoever conſiders that allowed diſtinction between *jus ad rem*, and *jus in re*, with the reaſon of it, will eaſily underſtand this matter. It is an approved Diſtinction in Law, That one man may have a Right to a thing, and another a Right in it; the one is a Right of a Legal Claim, the other of a Legal Poſſeſſion: And that this may and muſt be in all Civil Governments and mere Legal Rights, appears from the different Laws and Cuſtoms on which ſuch different Rights are founded: This I have hinted at before, but muſt now explain it more particularly.

In all Civil Societies there muſt be particular Laws to determine mens perſonal and particular Rights; and whatever is due to any man by ſuch Laws, is his Legal Right. But yet we know theſe Laws can determine no Controverſy without a living Judge; for if every man were to judge for himſelf, every man will make the Law to be on his ſide, and then we had as good have no Laws at all; and therefore the Fundamental Law of all Societies, which is ſuperior to all particular Laws, is this, That the laſt and final Judgment of Authority ſhall be eſteemed the Law, and that ſhall be every man's Right as to all the effects of Law, which is thus adjudged him.

him. Whoever calmly conſiders things, will find that it is impoſſible it ſhould be otherwiſe, without overturning all Civil Governments.

Suppoſe then that the true Heir to an Eſtate ſhould be diſpoſſeſſed of it by an Erroneous or Corrupt Judgment at Law; and another by the ſame Judgment ſhould by all Legal Methods uſed in ſuch Caſes, be poſſeſs'd of it, though he be not the true Heir; here now is *jus ad rem*, and *jus in re*: The true Heir by the Laws of Inheritance has the Legal Right to the Eſtate; but by the Supreme Law of all Societies, which refers the deciſion of all perſonal Rights to a Legal Authority, he who by a Legal Judgment is poſſeſſed of it, has the Legal Right in the Eſtate, againſt all Claims; and Legal Authority muſt defend him in it; and all who will ſubmit to Laws and Legal Authority, muſt acquieſce in it.

And thus it muſt be with reſpect to the Rights of Princes, as well as of Subjects. The Right to the Crown is often diſputed, as we all know; and to ſay that when ſuch Diſputes happen, there is no Authority in the Nation to decide them, is to ſay that Princes have no Rights to their Crowns by the Laws of that Nation; for there can be no Civil Laws, of which there are and can be no Civil Judges; for no man, no not a Prince, can be Judge in his own Cauſe; and if Princes have no Legal Rights, they can loſe no Legal Rights when they loſe their Crowns; and I doubt their Natural Rights will affect the Conſciences of very few Subjects.

A Supreme Independent Society muſt, from the Nature of ſuch Societies, and the Reaſon of their Inſtitution, have Authority within it ſelf to decide all Controverſies which may ariſe about the Rights of every part or Member of the Society, and to preſerve it ſelf from falling into a State of War, which is a Diſſolution of Civil Government; and if there be ſuch an Authority in every Nation, when the Supreme Authority has determined ſuch Diſputes, it muſt determine Subjects; and no Right, or pretence of Right, can affect the Conſcience after ſuch a final Judgment; unleſs Civil Rights can oblige Subjects to diſſolve Civil Governments, and to diſpute Legal Rights, not by the Law, but by the Sword; which is to overthrow all Civil Rights, and to put an end to the Authority of Laws.

This ſhows how much thoſe men are miſtaken, who think there can be no King in an Hereditary Monarchy, but the next Lineal Heir; and that no Allegiance being due or to be paid to him who is no King, none can therefore be due to any Prince, however poſſeſſed of the Throne, if he be not the next Heir. That no Obedience is due to him who is no King, I readily grant, though it may in ſome caſes be paid to him who is no King; but he may be a Legal King who is not the next Rightful Heir, as almoſt half of the Kings of *England* ſince the Conqueſt were not, and yet have been always own'd and obey'd as Legal Kings.

But

But the ground of the miſtake is, that they do not diſtinguiſh between Natural and Legal Relations; but think a King to be a King by as certain and unchangeable a Right, as a Father is a Father; as if Laws were of the ſame force and power with Nature; as if to be Heir to a King, which in Hereditary Monarchies gives a Legal Title to Succeſſion, did as neceſſarily and unavoidably make a King, as Natural Generation makes a Father. Theſe men do not conſider, that in Natural Relations the Right makes the Relation, and enters its definition; and therefore the Right and the Relation can never be ſeparated: The Right to be a Father is to beget, and the definition of a Father is he who begets; and therefore no man can be a Natural Father, but he who begets; and every one who begets, is a Father. But now in Legal Relations, an Antecedent Right does not make the Relation, nor is any part of its definition: *The Right* to be a King is one thing, and *to be a King* is another; the Rights may be very different, but the Notion of a King is the ſame: The Rights may be Hereditary, Patrimonial, Teſtamentary, by Election, or by Conqueſt; but the Notion of a King is one who Adminiſters the Civil Government with a Sovereign Authority; whoever does ſo, is a King, whatever his Title may be; as he that begets is a Father, though it be by Unlawful Embraces. The anſwer to that queſtion, *Who is King?* is not, *He who has the Right to the Crown*, but *he who is inveſted with the Regal and Sovereign Auth-*

*Authority.* But if we enquire how he came to aſcend the Throne? Whether he be an Hereditary or Elective King, a King *de facto*, or an Uſurper? Theſe queſtions muſt be anſwered by the Claim or Title by which he holds: That he was the Right Lineal Heir of the laſt King, or that he was Elected by the people; or that there being ſome diſpute about the Crown, it was adjudged to him by the Eſtates of the Realm; or that he won it by his Sword, and either keeps it ſtill by Power, or now wears it by the Conſent and Submiſſion of the people. An Antecedent Right cannot belong to the definition of the King, for then there could be no Kings but Hereditary or Teſtamentary Monarchs; and as for any other Right, he has it who is inveſted in the Regal Authority by thoſe who are the Supreme Power of the Kingdom, and repreſent the body of the people, when there is no Monarch, nor proviſion for adminiſtration of Government. Whoever is inveſted with the true Regal Authority, is a True and Right King; for he to whom the true definition of a King belongs, is a true King. An Uſurper, who Governs by mere Power, and by the forced Submiſſion of the people, has the Power, but not the Authority of a King. But he who is ſetl'd in the Throne by the free deciſion and declaration of the Supreme Authority of the Kingdom, has the Authority as well as the Power of a King; and therefore is a True King, whether any private Subject think he had any Antecedent Right or not.

So

So that it is a groundleſs pretence, That in an Hereditary Monarchy he is no King, how Solemnly ſoever inveſted with the Royal Authority by the Eſtates of the Realm, who does not Aſcend the Throne by a Lineal Succeſſion; for he is a King, who has the Authority of a King; and he has the Authority of a King, who is inveſted with the Regal Authority by the Eſtates of the Realm; for there is no other human way of conveying the Regal Authority; and then the Reaſon and Nature of things is ſo far from forbidding, that it requires us to pay our Allegiance to him, who is Legally inveſted with the Regal Authority and Power.

But yet this is not the queſtion, Whether in an Hereditary Monarchy the next Heir ought to be owned and Recognized for King? But, Whether Subjects may not with a good Conſcience obey him as the Legal Rightful King, to whom (when the Right to the Crown is diſputed) the Eſtates of the Realm adjudge the Crown? For all mere Legal Rights (when any controverſies happen about them) muſt be declared by the judgment of a Legal and Competent Authority; and Subjects have no Legal cognizance of any Legal Rights, but by a Legal ſentence and judgment. Their private Opinions and Judgments, in ſuch caſes as do not concern Natural but Legal Rights, are not the Rule of Conſcience (for that would overthrow all Civil Authority) but the publick judgment; and therefore he muſt be owned and obeyed as King, whom the Higheſt Authority of the Nation places

places on the Throne, whatever our private Opinion may be about the Right of Succeſſion.

Whoever will not allow of this, could not in Conſcience have paid their Allegiance to almoſt half the Kings that have been in *England*, ſince *William* the Conqueror. *W. Rufus* and *H.* 1. were not Lineal Heirs, for their Elder Brother *Robert* was ſtill living; King *Stephen* and King *John* were Kings without an Hereditary Title; *Edward* the 3*d.* was Crowned upon the Depoſition and forc'd Reſignation of his Father; the three *Henries*, 4, 5, 6. were of the *Lancaſter* Line, which was the Younger Houſe, and excluded the Rightful Heirs of the Houſe of *York*; and *H.* 7. had no Perſonal Right of Succeſſion to the Crown, but yet he had the Crown before he married the Heireſs of *York*, and took the Adminiſtration of the Regal Power to himſelf, though the Authority was hers, and kept the Crown after her death, though the Right was in his Son; which were as manifeſt Violations of the Right of Succeſſion as the Three *Henries* had been guilty of: So that there have been Eight Kings ſince the Conqueſt out of the Line of Succeſſion, and generally known to be ſo, beſides the Conqueror himſelf, who could pretend no Lineal Succeſſion to the Crown; and theſe Kings Reigns put together, amount unto near Two hundred years: And what ſhould the Subjects of *England* have done all this while, if the Lineal Succeſſion had been ſo Sacred, that they were bound in Conſcience to own no King

King but the Lineal Heir? How ſhould the *Norman* Line ever have begun, who were not the Lineal Heirs? and how came the Lineal Succeſſion in the *Norman* Line to be ſo ſacred, which it ſelf began without it, and had no Lineal Succeſſion for the firſt four Reigns?

But I muſt not diſmiſs this Argument without examining a late Author, who Diſputes very vehemently, *That Authority muſt go by Rightful Titles*: He ſays a great deal about it, but a ſhort anſwer will ſerve when once the caſe is plainly ſtated: He defines *Civil Authority to be a Right or Liberty in one to order or do a thing in Civil matters, laying an obligation on others to follow, or ſubmit to him.* Though this be a lame and equivocal definition, yet I ſhall not diſpute with him about it, if he will add the word *Legal*, that *Civil Authority is a Legal Right or Liberty*, &c. I agree with him that Authority is very different from external Force; and I have reaſon to grant to him (for he ruins his own cauſe by it) that God makes no Kings, but thoſe who are made Kings by ſome human Acts, and have a Human and Legal Right to Kingſhip. But now how does he prove from hence, that in *England* (ſuppoſe) none can have a Legal Right to Govern, but thoſe who have this rightful Title of a Lineal Succeſſion? For if the Title is not the Authority, but a Legal Inveſtiture gives a Legal Authority, it is poſſible that a Legal Title, and a Legal Authority, may be ſeparated, and the Authority continue Legal ſtill. Legal Autho-

*The Duty of Allegiance ſetled on its true grounds.*

rity must be conveyed in such manner, and by such forms as the Law has prescribed, or appoints to that purpose, for there is no other way of conveying it; and then that Authority which is given in form of Law, and that only, is a Legal Authority: If then the Estates of the Realm, who are the only Judges of such disputes, adjudge and give the Crown to one, whom we suppose not to have an antecedent Legal Title to it, yet he becomes Legally possessed not only of the external Force and Power, but of the Legal Authority of Government. And therefore he may challenge as his due, *all Legal Obedience* (which must be the true Notion of *Allegiance*, for nothing more then *Legal Obedience* can be due to a mere *Legal Authority*) because he is invested with the Legal Authority; the *Regal State* is his *Legal Property* against all other claims, and his Subjects must defend him in it; as the Legal Properties of private persons are determined by judgments of inferior Courts of Law; and if God makes Kings by humane Acts, I hope it is no injustice in God to make him a King, whom the Law makes a King, and to enjoyn our Obedience to a Legal King; and therefore whatever he can make of the Fifth Commandment, the *Legal King* is our *Politick Father*, and therefore entituled to that honour which is there commanded, if that concerns Princes, which I need not now dispute. Legal Authority may be said to be annexed to the legal Title, while there is no Legal Judgment against it, which was the case of

of Queen *Mary*, and *C.* 1. and 2. But when one is ſolemnly declared King, and placed in the Throne by the Eſtates of the Realm, he is the legal King and has the legal Authority, as the Royal Eſtate and Dignity was owned to be in *H.* 6. when the Duke of *York* diſputed the Right to the Crown; and thus it muſt be in all legal Rights, as I have already proved; and this ſtrikes at the foundation of all this Author's arguments; and therefore I need follow him no farther.

*5thly.* There is another difference between Legal and Natural Rights, not only that Legal Titles, and Legal Authority, may be parted from each other; but that Legal Titles and Legal Authority may be rightfully ſeparated from the Perſons, to whom they were once due, which Natural Rights can never be: A King may ceaſe to be a King, though a Father can never ceaſe to be a Father; for Laws have not the ſame force and power that Nature has. All men confeſs this may be done by a voluntary Reſignation, which diveſts ſuch a Prince of all Right and Authority to Govern; and if it may be done any way, his Right and Authority is not inſeparable from his Perſon: Our Adverſaries indeed will not allow that a King can loſe his Right, unleſs he voluntarily part with it himſelf; and therefore that no man can be King, while a former King is living, and that God himſelf cannot advance a King to the Throne, while any one is living who ever had a Right to that Throne, and never reſigned

his Right; becauſe it is contrary to Juſtice to give away the Throne from a Prince, who has the Right to it; as if God had not an Original Right to all the Kingdoms of the World, but was confin'd to Human Rights and Claims in making or unmaking Kings: But if a King can part with his Kingſhip, it is poſſible he may loſe it too; for there are uſually more ways than one, of parting with that which may be parted with: And beſides what is granted, *viz. A Voluntary Reſignation*, I ſhall conſider two other, *Conqueſt* and *Abdication*.

1. *Conqueſt*; Which I do not mention as if I thought this to be our Caſe, that we are a *Conquer'd People*, and that King *William* aſcends the Throne by *Conqueſt*: For whatever may be ſaid of the Conqueſt of King *James* (who was either forc'd out of his Kingdoms, or left them voluntarily; if the firſt, he was *Conquer'd*; if the ſecond, he *Abdicated* in the moſt proper Senſe, and I know no medium between them). Yet the People of *England* are not Conquer'd, nor did the King ever pretend any ſuch Right to the Throne. But let this be as it will, all I intend at preſent, is to convince theſe Men, That the Crown may be loſt by Conqueſt, which may extinguiſh old Rights, and begin a new one, and deliver Subjects from their Allegiance to a Conquer'd Prince.

That *de facto* Kings do loſe their Crowns by Conqueſt; that many great Revolutions of States and Kingdoms are owing to this Cauſe; and that no

no Nation ever made a ſcruple of Conſcience about ſubmitting to a Conqueror, is plain beyond denial; but the queſtion is, *quo jure?* How a Conqueror can gain a Right to a Throne, which another Prince has a Legal Right to? And how Subjects, tho Conquered, can transfer their Allegiance from the Rightful Prince to the Conqueror, who has no other Right but his Sword? And I ſhall diſtinctly conſider this with reſpect to Princes, and with reſpect to Subjects.

Now the general Anſwer to both, is this, That Legal Rights can reach no farther than the Laws of the Land, nor oblige any perſons whom they do not oblige, nor oblige any longer than the Laws oblige: Theſe are ſelf-evident Propoſitions, and need no proof; for Rights which are founded only on Laws, can reach no farther, nor laſt any longer than the Laws do.

1. In the firſt place then, with reference to Princes, no Legal Right that any Prince has to his Throne, can debar another Foreign Independent Prince in caſe of a juſt Quarrel, to ſubdue and conquer, and take his Crown. The reaſon is, becauſe the Laws of the Land, which give a Prince his Crown, do not oblige Foreign Princes, but only Subjects. The Laws of particular Countries are Laws only to themſelves; but there is no Law between Sovereign Princes, but the Laws of Natural Juſtice, and the Law of Nations. The Rights of Princes, with reſpect to each other, are only Poſſeſſion, which is the only Right men can have to any thing in a ſtate

ſtate of Nature, before the forming of Civil Societies, and with them Legal Properties; and for the ſame reaſons that any man in a ſtate of Nature might juſtly be turned out of his Poſſeſſion, a Prince may ſtill with equal Juſtice be turned out of his Kingdom by another Prince; and the Prince who conquers in a juſt War, may ſeize the Throne of the conquered Prince; and if he be placed there by the Conſent and Submiſſion of the people, is no Uſurper upon either Prince or People, but a Rightful Prince, who begins a new Legal Title. How indefeaſible ſoever a Prince's Right be by the Laws of the Land, that is no rule to Foreign Princes, ſo they do not violate the Laws of Nations, nor the natural Rules of Juſtice in ſeizing his Throne; and whenever the Crown may be juſtly taken, it is juſtly loſt, and there needs neither the Death nor the Reſignation of the Legal King, to give a juſt Title to the Conqueror. Poſſibly there have ſeldom been any ſuch juſt Wars, or juſt Conqueſts; but it is enough to my purpoſe, if ſuch there may be; and I think no man doubts, but that there may be juſt Cauſes of War; and a juſt War will make the Conqueſt juſt.

If any Prince or State be injurious to their Neighbours, the injur'd Prince may demand Satisfaction; and if it be denied, may take it himſelf, as every private man may do in a ſtate of Nature, when there is no ſuperior to judge between them; which brings ſuch a Diſpute to the Deciſion of the Sword, which is the only redreſs of Injuries, when there is no Civil Authority

thority to judge between them; and yet it were to no purpose to fight, if it were unlawful to conquer, and not only to do himself right, but prevent future wrongs from the injurious Prince.

For a Prince to invade the Dominions of another Prince, or to assist such an aspiring Monarch to enslave his Neighbours, is a just Cause for the injured Princes and their Confederates to oppose Force to Force; to fight and conquer if they can, and take the Crowns of such injurious Princes.

Nay, it has been always accounted not barely a just Cause of War, but an Heroical Act, to subdue Tyrants, and rescue their oppressed Subjects, who either cannot or must not defend themselves. To vindicate the injured and oppressed, is what all mankind not only allow but applaud; private men may do this against private Oppressors, by a course of Law where they are under Laws, or by private Force where they are not: Princes who have the Power of the Sword, may repress Violence and Injustice wherever they see it; for though they have no superior Authority over each others persons, nor Jurisdiction in each others Kingdoms, yet being under no Authority neither, nor any Laws which forbid their redressing Injuries, and relieving the oppressed, it is so far from being a fault, that it is great and generous to do it. Every man in a state of Nature, where there are no Civil Laws nor Government, has Authority enough to right those who suffer against natural Right. But this Liberty is restrained for the advan-

advantage of Human Societies, and the administration of Justice is put into the hands of the Prince and his Ministers. But Princes themselves are under none of these Restraints, and therefore may not only administer Justice to their own Subjects, but may repress the Violences and Injuries of other Princes, not only against their Neighbour Princes, but against those who are subject to them, and cannot help themselves. They have certainly as much Authority to relieve oppressed Subjects, as an oppressed Prince; and no man thinks it ill for one Prince to assist another against a Powerful Oppressor: And I do not know it was ever thought a fault yet, to relieve Subjects against an oppressing Prince, where the Oppression was notorious, and not made a mere pretence for Usurpation. I would desire any man to give me a tolerable Reason, why it was not as lawful for the Prince of *Orange* (had there been no other reason for it) to rescue and defend the Subjects of *England*, against the illegal Power and Oppressions of their King, as it is for the *French* King (some mens Pattern of Honour and Bravery) to endeavour by force of Arms to restore the Late *King James* to his Throne again?

And if Religion be concern'd in the Quarrel, it is never the worse for that, but the more reasonable and just: For why should not Princes be concern'd for the Glory of God, from whom they receive their Authority, and vindicate his Worshippers from the Persecutions of Cruel Tyrants? Subjects indeed must not rebel; Christianity must not be forced upon Men by Fire and Sword;

Sword; but must it not be defended neither by Christian Princes? When God has put the Sword into their hands, must they stand by and see the Worshippers of Christ persecuted, and not help them when they can? I am sure God delivered the Christian Church from the most bloody Persecution that ever was, by the Arms of *Constantine*, and made the Cross his Banner. And this was none of the least Causes of his War with *Licinius*, That he persecuted the Christians. When *Constantius* the *Arian* Emperor persecuted *Athanasius* and the Orthodox Bishops and Christians, *Constantine* advised him of it, and threatned War against him if he persisted in it; and it does not appear, that the Christians of those days, who fled to *Constantine* for refuge, thought he would have done ill in it; and yet their Dominions and Authority were as distinct and absolute, as *France* and the *Grand Signior*, though the most Christian King follows other measures.

Now I know not how to think that men are serious, when they will not allow an oppressed people, delivered by such a Generous and Charitable Prince, to own their Deliverer, and pay Duty and Allegiance to him? I think slaves have so much liberty as to own the Conqueror; and if he deliver them, and set them at liberty, and make Subjects of them instead of slaves, to be his Liege-men for ever. But some mens Notions make them greater Slaves to Princes than ever the world knew before.

2*dly*. But this brings me to a more difficult Enquiry, *viz*. How Subjects, even in case of Conquest, can be delivered from their Rightful Prince while he lives, and be at liberty with a safe Conscience to transfer their Allegiance to the Conqueror? for tho

Foreign Princes are not obliged by the Laws of the Land, yet Subjects are, and therefore are ſtill bound to pay their Allegiance to that Prince, whom the Laws of the Land make their Prince.

How difficult ſoever it may be to aſſign the Reaſons of this, it is certain it muſt be ſo, if a Prince may loſe his Crown by a juſt Conqueſt; for if a Prince juſtly loſe his Crown, he muſt loſe the Allegiance of his Subjects, which muſt follow the Crown; and it is impoſſible one Prince ſhould loſe his Crown, and another win it, were it unlawful for Subjects to transfer their Allegiance to the Conqueror; which is reaſon enough to conclude, That the Laws of the Land do not oblige Subjects in ſuch caſes; and if we carefully conſider the true nature and obligation of National Laws, we ſhall be eaſily ſatisfied, That they do not.

For it is certain, National Laws have their whole dependance on the National Authority; it is that only makes them Laws, and they can continue Laws no longer than that Authority laſts which gives Being and Obligation to them; and therefore National Laws muſt of neceſſity partake in all the Changes and Alterations of Government. Our Obedience is not due to Laws, but by virtue of the Authority that commands them; and when the Authority is at an end, the Obligation of Laws muſt ceaſe, as far as they reſpected that Authority. Laws are made for a ſettled Goverment, and they oblige Subjects, while the Goverment is and can be adminiſtred by theſe Laws; but when the Authority and Government is changed, and they ceaſe to be Laws in *Weſtminſter-Hall*, they are no Laws in Conſcience neither: For how can Laws oblige without Au-

Authority? Or what Authority can mere humane National Laws have againſt all the preſent Authority and Government of a Nation? As for example; The Legal Right to the Crown concerns a Regular and Legal Succeſſion, but not the beginnings of a Regal Power. The Law of Inheritance continues the Regal Power in the family poſſeſſed of it, whoſe Inheritance originally it was not; for the firſt King of the Family could not be Heir to the Crown, by whatſoever other means he came by it; and therefore it can oblige Subjects only againſt their own voluntary Interruption of the Royal Line, but not againſt violent Revolutions; for this is to make a Law, that no Prince ſhall conquer the Legal King, and poſſeſs himſelf of his Throne, that is, to make a Law, that the Sea ſhould never break its banks; and in caſe of ſuch a Revolution, to make a Law, That no Subjects ſhould own or ſubmit to the prevaling Prince, is like making a Law, That no Cottages or Villages ſhould be drown'd, or carried away, when ſuch a Deluge happens. Laws were never made for ſuch caſes as theſe, and therefore in ſuch caſes cannot be ſaid ſo properly to loſe their Obligation, as not to be Laws: We may as reaſonably ſay, That the Subjects of *England* are bound to obſerve the Laws of *England* when they are in *France*, as that they are bound in conſcience to obſerve the Old *Engliſh* Laws, if the *French* King ſhould by Force aſcend the *Engliſh* Throne. No Laws can be made againſt violent Revolutions, becauſe ſuch Revolutions over-power Laws; and it is as abſurd to ſuppoſe that any Laws ſhould oblige the Conſcience to oppoſe the Ruling and Governing Power, when ſetled by a Legal Inveſtiture:

Which is to ſuppoſe, That Laws which are only Rules of Government, and owe their Being to a National Authority, ſhould oppoſe all the Authority of the Nation.

Thus I obſerve farther, That mere human Laws cannot oblige the Conſcience againſt Force; for when Authority cannot protect, it cannot command. Civil Societies are inſtituted for mutual defence; but when I am out of the Protection of Civil Authority, my Natural Liberty of Self-defence returns. If a man fall among Thieves, he may make the beſt terms with them for his life, that he can, and no Laws can deny him this liberty; for Self-preſervation is a Natural Right, and Nature is ſuperior to human Laws, and of greater Force; it does not hence follow, that the mere Oppreſſion of Government reſtores this Natural Liberty, becauſe we have granted away this Right of Self-defence, by entring into Societies; and God has taken it away, by forbidding us to reſiſt Authority; and it is a very different thing to defend our ſelves when Authority cannot defend us, and to defend our ſelves againſt Authority; the firſt we have not granted away, the ſecond is againſt the Fundamental Reaſons of humane Government; and the Nature of Societies ſuppoſeth, that while the Conſtitution of the Government is ſecured, we muſt ſacrifice our private Rights and Intereſts to Publick Peace and Order; but it was never the intention of Human Government to deny men the Right of Self-defence, when Authority could not protect them: This is the caſe of Slaves and Captives, of beſieged Cities and Gariſons, who have a Natural Right to ſubmit to the Conqueror, when their own Prince cannot relieve them: And this wholly

wholly waves the Diſpute about Authority; for whatever Authority may be ſuppoſed to remain in the Prince, his Authority is at an end, as to thoſe perſons whom he cannot protect; as Civil Societies themſelves muſt diſſolve, and all their Authority end, when they cannot defend themſelves; and when any Subjects are delivered from the Authority of the Prince who cannot protect them in paying their Allegiance to him, they are at liberty to make the beſt Compoſition they can with that Prince in whoſe power they are, and to become his Subjects; and when they have bound themſelves to him by Oath, their former Allegiance is utterly extinct; when we are at liberty from one Prince, we may make our ſelves Subjects to another, and when we have done ſo, we can owe Allegiance to none but him.

To confirm all this I obſerve farther, That the Laws of particular Countries are ſubordinate to the Laws of Nations, and muſt give place to them. By the Laws of Nations, I mean ſuch Laws as from the reaſon and nature of things, and by common practice and implicit conſent, are made the rules and meaſures of Juſtice between Sovereign Princes and Independent States. Now, as I have already ſhown, by the Laws of Nations, Princes by a Juſt Conqueſt may acquire a Juſt Title to the Conquered Prince's Throne; and if Princes may acquire ſuch a new Right and Title, it is certain Subjects by the Law of Nations may own ſuch a New-acquired Right. For the univerſal reaſon of Mankind muſt over-rule private and National Conſtitutions; for every man is a Member of the Univerſe, and a Citizen of the world, as well as a Subject of a parricular Kingdom; and the more univerſal Obligation always take place of par-

particular Obligations; for they are prior Obligations, and ſuppoſed in that which is particular, which therefore cannot derogate from them: And it would be very ſtrange, if a Prince by the Law of Nations may acquire a new Right, and yet it ſhould be unlawful for Subjects to own his Right.

Nay, The univerſal conſent and practice of all Nations, both of Princes and People, have made this the ſtanding Law of all Revolutions, to ſubmit to the prevailing Power, even when there is no pretence of Right, but only Force. No people ever ſcrupled this (till of late) upon Principles of Conſcience, though the Laws and Liberties of a Nation have made ſome ſtruggle to the laſt, to ſhake off the yoke of an Uſurper.

The Primitive Chriſtians complied with all the Revolutions of the Empire, and never diſputed the Rights and Titles of their New Emperors; and thoſe who can find out Legal Rights for all their Emperors, are well qualified, if they ſo pleaſe, to be Advocates-general for all the Uſurpers that ever were in the World: But the Chriſtians of thoſe days never concerned themſelves either with making or unmaking Emperors, but took them as they found them, and believed them all to be ſet up by God, as is evident from *Tertullian*'s Apology. The Chriſtian Biſhops of thoſe days ſubmitted even to *Maximus* himſelf; and though *Sulpicius Severus* tells us, they were cenſured for their forward and flattering Courtſhip to that Tyrant; yet no man blamed them for their bare Submiſſion and Obedience to him as Emperor, which *St. Martyn* himſelf did, though he treated him at firſt with a Monkiſh Liberty and Rudeneſs. The irruptions of *Goths* and *Vandals* furniſh us with as many

many Examples of this, as they obtained Conqueſts; for there were no Chriſtians found ſo hardy in thoſe days, as to diſpute their Titles, and reſerve their Allegiance for their Emperor: And to this day it is as conſtantly practiſed without any ſcruple, as there are Cities and Gariſons beſieged, ſurrendred, or taken, and that before any Compoſition made by the Prince, whoſe Subjects they were, as a late *Author* inſinuates, contrary to the known and viſible daily practice of all people. *The Duty of Alleg.*

This is what all Princes expect from the Subjects of other Princes when they fall into their power by the ſucceſſes of War, and therefore what in reaſon they muſt allow their own; and ſuch a general conſent of Princes and People makes a ſtanding Law for Revolutions: And no man's Loyalty or Fidelity to Princes ought to ſuffer, even in opinion, upon this account.

Nay farther, The Laws of our Country, which are the rules and meaſures of our Civil Government, can never oblige Subjects to the overthrow of all Government. Yet ſhould theſe *Jacobite* Principles take place, that we muſt upon no pretence own any King but the Rightful Lineal Heir while he is living; many caſes may ſo happen wherein Subjects muſt be bound in Conſcience to own no Government; thus it muſt neceſſarily be, whenever the Rightful King can't Govern, and yet no body elſe muſt: When he is Conquer'd and driven out of his Kingdoms, and Subjects muſt not own the Conqueror, though they can have no other Prince to Govern them. I would only deſire theſe men to tell me, Whether any Laws can oblige men to live under no Government? To diſſolve Civil Socities into

into a ſtate of Anarchy? If there were ſuch a Law made, it would be a void, nay an impious Law, as being againſt the Laws of Nature, and the Laws of God, who has Created man a Sociable Creature, and inſtituted Civil Societies for the Government of Mankind; and is it not as unreaſonable then to expound any Laws to ſuch a ſenſe as ſhall oblige Subjects to diſſolve the Government of the Nation, as far as in them lies, and not to own any Authority but Force? Whenever they can prove that there ought to be no Government in a Nation, while the Rightful Prince cannot Govern, I will grant, that Subjects ought to own no other Authority; but if no Laws, no Legal Rights, can be more ſacred than the very being of human Societies and Civil Government; the Rights of Princes muſt give place to the neceſſities of Government, for it is more abſolutely neceſſary, that human Societies ſhould be maintained and governed, than that any Prince, how unconteſted ſoever his Right be, ſhould Govern; for I think Legal Rights, which owe their very beings to human Societies, were never intended to put an end to them.

This I hope is enough to clear this Point, That a King may loſe his Legal Right to the Crown by Conqueſt, which gives the Conqueror in a Juſt War a new Right, and ſets Subjects at Liberty to transfer their Allegiance to the Conqueror: And I ſhall obſerve by the way, that though we are not a Conquered People, yet moſt of thoſe reaſons, which will juſtify Subjects in transferring their Allegiance to a Conqueror, will much more juſtify our Submiſſion and Allegiance to Their preſent Majeſties, whatever opinion we have about Right.

For

For it is certain, the Authority of the Nation is now in their Hands, and placed there by a legal Judgment; and if National Laws, which are the Laws of the Government, cannot oblige the Conſcience without a National Authority, to give an Obligation to them, much leſs againſt a National Authority, then there can be no Law in *England* which at this time obliges the Conſciences of *Engliſh* Subjects to pay their Allegiance to the late King *James*: There is no ſuch Law to be found in *Weſtminſter-Hall*, or Parliamentary Judgments, or Determinations, and then I know not where to find it. There is no King in *Weſtminſter-Hall*, or on the Parliament Rolls but King *William* and Queen *Mary*; no Treaſon but what is committed againſt them, and therefore no Allegiance due by Law, but only to them: For Treaſon is a violation of our Allegiance, and where no Treaſon can be committed, no Allegiance can be due.

Tho' the Nation is not Conquered, yet it is certain, that private Subjects are under as great Reſtraint by the legal Change of the Government, as if they were in the Power of a Conqueror; for to reſiſt would be equally fatal to them in both Caſes, and there is no Authority that can defend them: And if Human Laws cannot oblige the Conſcience againſt Force; if every Man has a natural Right to preſerve himſelf by yielding and ſubmitting to Power, when there is no Authority to defend him againſt it; why may he not as well ſubmit to the irreſiſtible Power of a National Authority, (how unjuſt ſoever he thinks it is) as to the Military Power of the Sword? Why may not Men as well ſubmit when they are conquered in the high-

eſt Judicature as in the Field? It ſeems to me, that there is little difference between them, when Men muſt forfeit their Lives, Eſtates, or Honours either way: And when the Authority of the late King (whatever they ſuppoſe it to be) can no more defend them from the Laws than from the Sword, what ſhall hinder his Authority's being at an end to them, and their being at liberty to take care of themſelves?

The Subjects of *England* have a legal Right to their Lives, and Liberties, and Properties as, well as the King; and I know no Law that commands Subjects to forfeit their Lives, and Liberties, and Propeties, meerly becauſe they cannot defend the King in his, nor the King them in theirs. In Caſes of ſuch Extremity Kings will take care of themſelves, and Subjects have as much Right to take care of themſelves. If any Neceſſity will juſtifie Kings in leaving their Thrones, and the Government, and the Defence of their Subjects, the ſame Neceſſity will juſtifie Subjects in ſubmitting to a new Power. No meer human Laws, nor human Authority can oblige in Caſes of extream Neceſſity: The Authority of God indeed can, becauſe God can reward and puniſh beyond the Grave. But though the Laws of Men are bound on us by the Authority of God, yet God requires us to obey Men and their Laws no farther than their Authority reaches; and therefore not in Caſes of extreme Neceſſity, which in moſt Inſtances will diſpence with the poſitive part of Moral Laws themſelves.

*Secondly*, Let us now conſider the Caſe of *Abdication* and *Deſertion*, which was plainly the Caſe of the late King

King *James*: For he seeing himself deserted by his Subjects, and by part of his Army, who would not fight for him against their Religion and Liberties, durst not venture the Fortune of a Battel; and being, as appears by his Actions, resolv'd not to submit the Redress of all Grievances to a Free Parliament, had no other way left but to withdraw his Person, and fling up the Government.

The Question then is, Whether this was such a Leaving of his Crown, as put it into the Hands of the Estates to dispose of it to the next Heir. We must not expect to find any Precedent of this Nature, nor any Provision made for it in Law; for there never was an Example of this kind before, and probably never will be again: But all such unusual Cases must be determined by living Judges, according to the reason and nature of Things: We know how it has been determined, and what Disputes those Words *Abdication* and *Desertion* have caused; but I shall not dispute about Words, but consider the Thing.

I need not be at any pains to prove, that Government is absolutely necessary, and that all people have as natural a Right to supply the Vacancies of Government according to the Laws and Constitutions of the Kingdom, as they had at first to form themselves into human Societies: That Kings are made for Government, and therefore have no longer any Right to Kingship than they will administer the Government: And I think it is as plain, that for a King deliberately to quit his Kingdoms, without making any manner of Provision, or leaving any Authority behind him to govern in

his Name, is actually to quit the Government. For to leave off governing, (as he does who withdraws his Person and Authority) is to quit the Government: And when the King leaves his Crown and Government, it must either of Right belong to the next Heir, or the Body of the Nation, and the Estates of the Kingdom will be restored to their Liberty of providing for themselves; for the Nation must be governed.

It is evident indeed, that Princes many times leave their Thrones without any intention to give up their Right to Government: But the Question is not what they intend, but what they do: If to leave their Thrones empty, which must be filled by some-body, be in the nature of the thing, or by necessary and unavoidable Consequence, to give up the Possession of them to some-body else, it is in vain to talk of parting with the Possession, without parting with the Right, as far as he parts with the Possession. For though a Right to the Crown be a different thing from the Possession of the Crown, yet the legal Possession of the Throne, and the legal Right to Government, are either the same thing, or so inseparably annexed, that to part with one is to part with both. The Right of Government (which is nothing but a Right to exercise all Acts of Government) is given by the legal Possession and Investiture, and therefore he who parts with his legal Possession and Administration of Government, parts with his Right to Govern. To forfeit the Obedience of Subjects, I think, is the same thing, as to forfeit the Right to Government; and that he most certainly does, who leaves the Government: For Subjects cannot be bound to obey him who will not Govern, who

who leaves them to take care of the Government themſelves, or gives up the Government to thoſe who will take it. No Prince has a Right to oblige Subjects to live without any Government, when he thinks fit to leave them; and therefore by leaving the Government, he abſolves them from his Government, and gives them a Right to take care of themſelves; and if he gives them a Right to diſpoſe of the Government, he muſt give away his own Right to Govern.

Thus it is in the nature of the Thing, whatever the Occaſion be that moves Princes to leave their Thrones, and how unwillingly ſoever they do it: For when a Prince leaves his Throne, he either leaves his Subjects in Poſſeſſion of ſome new Powers, or makes it neceſſary for them to ſubmit to ſome new Government; and the ſame Neceſſity which juſtifies a Prince in leaving his Throne and Government, muſt Abſolve his Subjects from their Allegiance: But then the different Reaſons for which Princes leave their Thrones, make a great difference in the Obligations of Subjects, as far as it is in their Power to receive or not to receive ſuch a Prince again; the underſtanding of which will be of great uſe in our preſent Caſe.

When a Prince is driven out of his Kingdoms by a Foreign Power, if Subjects are able to do it, they are bound in Conſcience to reſiſt the Uſurper, and to reſtore their Prince to his Throne again; if they cannot reſiſt, they may and muſt ſubmit: As their King unwillingly left his Subjects to ſave his own Life and Liberty; ſo Subjects may as unwillingly leave their King

King, and ſubmit to the Conqueror, to ſave their own Lives, and Liberties, and Fortunes. For the Neceſſity is equal on both ſides; the King does actually leave his Throne and Government, though he be forced by a hard Neceſſity to do ſo, and when the Throne is left empty, Subjects are free; but ſuch a Vacancy being only the effect of Force, Subjects ought to take no Advantage of it againſt their King, when it is in their power to reſtore him; but when they are under the ſame Neceſſity to fill the Throne, that he was to leave it, his leaving it vacant will juſtifie their filling it again, and ſubmitting to a new Prince.

If a King be driven out of his Kingdom by his own rebellious Subjects, this will never juſtifie them in keeping him out. For, though the King be gone, he did not leave them, but they drove him away; and if the Throne be vacant, they themſelves made it ſo, and therefore are bound to fill it again with the Prince whom they have put out: And yet how far Loyal Subjects in this caſe may ſubmit to Force and Neceſſity, and conſult the Peace and good Government of their Country is a great diſpute, which I have no occaſion to interpoſe in at preſent; all that I have to ſay, as to this matter, is, That though in this Caſe the Throne be *de facto* Vacant, yet it is not ſuch a Vacancy, as will juſtifie Subjects in filling it with a new Prince: But if the Throne be filled, or a new Government ſet up, how far Subjects may ſubmit to it, is another Queſtion.

If a King without any force from his Subjects, privately without their knowledge, withdraws his Perſon and

and Authority, it is certain he leaves his Throne empty, but whether his Subjects may fill it with the next Heir, or muſt invite him back to fill it again himſelf, belongs to a publick Judgment, upon a wiſe and equitable Conſideration of all Circumſtances; and ſuch a publick Judgment ought to determine all private Subjects.

The Throne is empty, when the King has left it, and an empty Throne muſt be filled, becauſe the Nation muſt be governed: But yet there ſeems to be ſome difference in the nature of the thing, between ſuch a Vacancy as this, by the King's withdrawing his Perſon and Authority, and a Vacancy by Death, which gives the next Heir an immediate Right to aſcend the Throne: The Right of Inheritance and Succeſſion does not immediately take place, but upon the natural Death of the King: Whether the Throne be ſo Vacant, while the former King is living, as to give Right to the next Heir to ſucceed, is matter of Judgment, and muſt be determined by the judicial Sentence of thoſe to whom the Cognizance of ſuch Matters belong.

Now though the Judgment of the Eſtates ought to be concluſive to private Subjects, yet if it be lawful after ſuch a Judgment to enquire into ſuch Matters, it ſeems to me, that King *James* had given them ſufficient Reaſon to juſtifie them to all the World in declaring his Throne vacant.

I have already obſerved (for there is no need of proving, what is ſelf-evident) that when a King has left

left his Throne, it is empty, and that the Neceſſities of Government require, that an empty Throne ſhould be filled again, and then it muſt be in the Power of Subjects (whom the King has left without any Government, to ſhift for themſelves) to fill it. Now if the Reaſon of the King's leaving be ſuch, as makes it juſt for them, if it be in their Power to call him back, they ought to do it; but if he left them for ſuch Reaſons, as would make very good and Loyal Subjects glad to be rid of him, they may with a good Conſcience take the Advantage of his leaving them to fill the Throne with a more deſirable Prince. For no Prince has Liberty voluntarily to forſake his Government without giving up his Right to it, for human Societies muſt be governed; and therefore he actually deveſts himſelf of the Government, who by leaving it, makes it his own choice not to govern: And when he has done ſo, 'tis very hard to conceive, whence he ſhould have Authority to reſume the Government again at his Pleaſure, without the concurrence of the People whom he would govern: So that to me it ſeems plain, That a Prince who once quits his Government, muſt expect a Reſtauration from the good Nature of his former Subjects, not of Right: His Appeal muſt be to Conſcience and Equity, not a Demand of their Duty by the ſtrict Rules of Juſtice.

Let us therefore conſider the Caſe of the late K. *J.* with relation to Pleas of this kind. All that ever I could hear ſaid againſt his *Abdication and Deſertion* is, that he was driven out of his Kingdom by juſt and reaſonable fears, and therefore left his Throne very un-

unwillingly, and did not intend to deveſt himſelf of Royal Authority, but only to reſerve himſelf for better times, till he could return to his Throne by force and power. All this I verily believe is true, that he went away unwillingly, and hoped to return again with power; and had no mind, no intention to part with his Kingdom for ever; but what would they prove by all this? would they prove that the late King did not leave his Throne? or that when he had left it, the Throne was not empty? which is to prove that he did not leave his Throne, or that though he left it, it was not empty, becauſe he left it, and left it empty in a fright. Or would they prove, that his going away in a fright was not a voluntary Reſignation of his Throne? I care not much if I grant this too, if they will but grant that it was a leaving it; for to leave a Throne, gives Subjects a Right to fill it, as well as a voluntary Reſignation does, becauſe the Throne muſt be full or Government ceaſes; and a King that leaves his Throne, though he knows it muſt be filled, if he leaves it, does that by leaving his Throne, which he who reſigns it, does by a formal Inſtrument of Reſignation; that is, he ſignifies to his Subjects that he won't govern them, but they muſt ſhift for themſelves; for it is not at the will of a Prince, whether a Kingdom ſhall be governed or not; and when the King has left them, it ſeems more Regular and Legal to place the next Heir on the Throne, than to ſet up any other Perſon or Government.

The Reaſons then, why Subjects ſhould not have filled the Throne, when the late King had left it empty, ought to be reſolved into the Reaſons of his go-

ing away. What they were, is ſufficiently known; and I believe no *Engliſh* Proteſtant, who loves the Religion and Liberties of his Country, will ſay, that they are ſuch Reaſons, as would excuſe or juſtifie his leaving them, or make it the Duty of Subjects to recal him.

The only viſible Reaſon of his leaving us, was this, That if he ſtaied, he muſt be under a neceſſity to call a Parliament, and he was reſolved, Not to venture his Cauſe with them; Not to ſuffer them to cenſure and redreſs the Miſcarriages of his Government; Not to part with his Diſpenſing Power; Not to give ſuch Security, as a Parliament would have demanded, for the Preſervation of their Laws, Liberties and Religion: That is, he was reſolved to be no King, or to be Abſolute and Arbitrary; and let any Man judge, whether this were not a good Reaſon for Subjects to take the Advantage which he had given them, and to fill the Throne, which he had made empty? To renounce a Legal Government, is to renounce the Crown of *England*; and he who leaves the Throne, to avoid the Neceſſity of Governing by Law, may get it again when he can; but Subjects are not bound to give it him: They know for what Reaſon he parted with it, and to reſtore it to him, would be a plain conſent that he ſhould have it upon his own Terms.

I know it is pretended, That he had reaſon to fear that his Perſon was not ſafe in *England*; and that was the true Reaſon, why he withdrew into *France*: But this was ſo unreaſonable a Fear, had he reſolved to

to have complied with the Parliament, that it ſeems rather to be a plauſible Pretence than the true Cauſe of his withdrawing.

The Prince indeed was landed with a conſiderable Force, and the King was deſerted by ſome of his Subjects, who declared for the Prince, and by part of his Army, that went over to him; which I grant, was Reaſon enough for him to ſuſpect, that it was not ſafe for him to diſpute this Matter by the Sword, and defeat his Hopes of attaining his irregular Deſires by a Victory; but it was no Reaſon to think, that his Perſon was not ſafe, would he have called a Parliament, and referred the Redreſs of all Grievances to them; thoſe who would not fight for him againſt the Prince, and againſt their Religion and Liberties, would have ſecured his Perſon from all violent Attempts. He had Reaſon to believe this, ſince the Prince deſired no more, and the Aſſociators declared for no more (and all their Words and Actions ſpoke it) than that they would adhere to the Prince *till our Religion, Laws, and Liberties, are ſo far ſecured to us in a free Parliament, that we ſhall no more be in danger of falling under Popery and Slavery.* The denial of this was the Reaſon why the Prince of *Denmark*, Duke of *Grafton*, Lord *Churchill*, and others of the Nobility left him, as appears from the Letters of the Prince, and my Lord *Churchill*: And when his Voyage for *France* was ſtopped, and he returned to *London*, the general Acclamations wherewith he was received, as he paſſed through *London*-Streets, might have ſatisfied him how little danger his Perſon was in; and it is ſaid, that he obſerved it himſelf, That

*Hiſtory of Deſertion*, page 75.

*though they hated his Religion, they loved his Perſon.*

If then the late King had no reaſonable Cauſe to fear the ſafety of his Perſon, would he have ſtaid to redreſs all Grievances by a free Parliament? if Subjects had no ſufficient Reaſon to think, that he withdrew his Perſon and Authority for any other Cauſe but to avoid the neceſſity of giving Satisfaction to his People in Parliament; if there be no Evidence, that he would have ſtaied to redreſs all Grievances, had he been aſſured of the ſafety of his Perſon, it ſeems to me, that the Eſtates had great Reaſon and Neceſſity to do as they did; to declare the empty and forſaken Throne vacant, and to fill it with the next Heir. It is certain this is ſuch a Caſe as belongs to the Supreme Judgment of the Eſtates; for when a Throne is empty, by what means ſoever it become ſo, it belongs to them to conſider whether and how it is to be filled: And in ſuch Caſes it is the publick Judgment, and not ſome Mens private Reaſon, which is our Rule.

But let us ſuppoſe his Fears had been never ſo juſt and reaſonable, we muſt conſider, who brought him into this ſtate of Fear and Danger; for if the Guilt of this were wholly his own, his Fears are no better excuſe, than thoſe violent and illegal Proceedings which firſt frightned the whole Nation, and then brought theſe Fears upon himſelf. What he had already done, juſtified both the Prince of *Orange* and the Subjects of *England* in what they did; and if no Body were in Fault but himſelf; if his own Miſgovernment

vernment made him Fear, and his Fear made him quit his Throne, his Abdication is as perfectly his own Act as his Miſgovernment was; and then Subjects might very innocently take the Advantage, which without their Fault he had put into their Hands, to deliver themſelves from Fear and Slavery.

The Prince of *Orange*, now our Gracious Sovereign, had very juſt Reaſons for what he did. His Princeſs was the next Preſumptive Heir to the Crown of *England*, and in Her Right he was immediately concerned in the Protection and Defence of theſe Proteſtant Kingdoms, at leaſt ſo far as to ſecure the Succeſſion.

The late King made great haſte to ſubvert the Fundamental Conſtitution of the *Engliſh* Government, to change our Laws, and Liberties, and Religion; and both to effect and ſecure ſuch Uſurpations, took care, as faſt as he could, to put the whole Civil and Military Power into the Hands of Papiſts. What an evil Aſpect this had on Proteſtant Heirs and Succeſſors (beſides the preſent Oppreſſion of the Subject) every one ſaw; eſpecially when it was pretended that the Queen had brought forth a Prince of *Wales* to inherit the Crown, and to perfect that bleſſed Work of Slavery and Popery. If this will not juſtifie the Prince of *Orange*'s early Care for a Legal Redreſs of Abuſes, which would infallibly have altered the Succeſſion, and defeated his Right, if they had proceeded any farther, I think the Heir to the Crown is in an ill condition; for it may be with the lateſt to put in his Claim, when another is ſtep'd into the Throne before

fore Him. It is no new thing for the Parliament of *England* to ſettle the Succeſſion to the Crown, while the King is living, and to make all legal Proviſions to ſecure the Succeſſion; and if this may be done during the Life of the King, the Prince had great Reaſon to make his Appeal to a Free Parliament, and to take Arms to obtain ſuch a Free Parliament, which the humble Addreſſes and Supplications of Subjects could not obtain; and this was all the Prince did to put him into this Fright; and if he had not done it, he had in ſome degree deſerted his Right, as King *James* has now deſerted his Throne.

As for the Subjects of *England*, the great Body of the Nation ſtood ſtill, and neither aſſiſted nor oppoſed King *James*, though generally they wiſhed well to the Prince: And what was the Fault of this? The moſt Paſſive Men have always declared, That they are not bound actually to ſerve and defend the King in his illegal Oppreſſions, or in his Uſurpations upon the Laws, and Liberties, and Religion of their Country; for no Man can be bound by Law to fight for the King againſt the Laws: For the Right of the King, which is only a Right by Law, can never be more Sacred than all the Laws; and it ſeems very hard to fight for one Law againſt all other Laws; to fight for a King to make our ſelves and all his other Subjects Slaves.

The Prince of *Orange* came with an Army into *England* to demand a Free Parliament, to redreſs the Miſcarriages of Government, to ſecure the Succeſſion, our

our Liberties, and Religion, which were beyond denial in danger. What now ſhould the Subjects of *England* do? Should they fight for King *James* againſt the Prince? What had that been but to fight againſt a Free Parliament, our Laws, and our Religion? Thoſe Proteſtants, who are now the moſt zealous Aſſertors of the late King's Right, did at that time, for theſe Reaſons, excuſe themſelves from the Obligation of fighting for him. And yet *Engliſh* Subjects cannot be charged with denying to aſſiſt their King againſt the Prince of *Orange*, for they were never required to do it: There were no new Commiſſions granted them; without which, ſome are of Opinion, according to ſtrictneſs of Law, it had been Criminal in them to take Arms, though it had been to defend their King.

And it ſeems very hard, if ſuch a difficult Juncture as that was, when there were two Armies in the Bowels of the Kingdom, will not juſtifie thoſe Gentlemen who took Arms and ſtood upon their own defence; and that they declared to ſtand by the Prince of *Orange*, till all Miſcarriages ſhould be redreſs'd by a Free Parliament, ſeems to me little more than what thoſe Biſhops themſelves did, who now refuſe the Oaths; for when they were required to do it, they would not ſign an Abhorrence of the Prince's Undertaking; and at *Guild-hall* they ſigned the Lords Addreſs to the Prince; wherein they promiſed him their Aſſiſtance to procure a Free Parliament.

And

And if neither the Prince, nor the Subjects of *England* were to be blamed for what they did, it is eaſie to gueſs where the whole Blame muſt lie: And if he wilfully brought this Neceſſity upon himſelf of quitting his Kingdoms, and rather choſe to leave his Throne than ſatisfie the juſt Demands of the Prince, and of his own Subjects, he left his Throne for ſuch Reaſons as made it juſt and neceſſary for his Subjects to fill it.

If theſe Principles be true, they furniſh us with plain and eaſie Anſwers to all the Difficulties relating to our preſent Settlement; which I ſhall briefly obſerve as the Sum of this whole Diſcourſe.

1. As firſt, Whether the late King *James* be ſtill *of Right* the King of *England*, or *of Right* ought to be ſo. The only Argument to prove King *James*'s remaining Right is, That he was the Rightful Heir to the Crown, and was legally and rightfully poſſeſſed of it, and therefore is Rightful King ſtill, or at leaſt of Right ought to be King.

Now, from what I have already ſaid, and I hope, proved, the Anſwer to this is plain: 1. That as to his Right of Succeſſion, the Subjects of *England* owned it, and actually gave him the Crown, with all the accuſtomed Rites and Ceremonies of Coronation; and therefore there is no diſpute about that: But the Queſtion is, Whether a King who loſes, or gives away, or deſerts his Crown, and falls from the Regal Power, have a new Right of Succeſſion when the Throne is again filled; that is, Whether if he

part

part with his Crown, he can be Heir and Succeſſor to himſelf, and by the Right of Inheritance challenge his Abdicated Throne again.

2. That he was once a *Rightful King*, does not prove that he is King ſtill: For legal Right to a Relation and the legal Relation may be ſeparated: he may be no King, who had once a legal Right and a legal Poſſeſſion of the Throne; and he may be the legal King, or One whom the Law owns to be King, who had no immediate antecedent Right to the Throne. For though in Relations which are founded in Nature, the Right and the Relation cannot be ſeparated; yet in legal Relations they may. And if he who had, or has a legal Right to the Crown may be no King, Subjects can owe him no Allegiance, for Allegiance is due only to the King.

3. That he was once a Rightful King, does not prove that he has any Right to be King now: For a *legal Right* (as the Right to the Crown is) may be loſt by Conqueſt, or parted with by *Reſignation*, or by *Abdication* and *Deſertion*, and that the late King has ſo deſerted his Throne, as to make it not only lawful, but even neceſſary for his Subjects to fill it again, I have already proved.

So that it is not enough for thoſe who inſiſt on King *James*'s Right, to ſay, That he was Rightful Heir to the Crown, and that he was once Rightful King, which is all that they pretend to: For though he was once a Rightful King, he may

now neither be a King, nor have any Right to be King.

II. Another Queſtion is, Whether King *William* and Queen *Mary* be the Rightful King and Queen of *England?*

Now had King *James* died before the pretended Birth of the Prince of *Wales*, this had been no Queſtion, for then Queen *Mary* had been the undoubted Heir to the Crown, and in her Right, and by Conſent of the Princeſs *Anne*, allowed and confirmed by the Authority of the Eſtates, King *William* had been the Rightful and Legal King. Now if King *James* parted with his Right and Crown together, by forſaking his Government, and leaving his Throne vacant, and the Eſtates had a Right, if they pleaſed, to fill it, there can be no more Pretence of Right upon the late King's Account than if he had been dead. And as for the pretended Prince of *Wales*, at beſt his Birth was ſo very doubtful, that there was no reaſon for the Eſtates to reject the next undoubted Heir for him; eſpecially when the King refuſed to ſubmit that Diſpute to Parliament, as the then Prince of *Orange* had done. And had his Birth been never ſo unqueſtionable, he could not be had, without taking the late King again; which was Reaſon enough for the Eſtates not to concern themſelves with that Diſpute, but to place the next Heir upon the Throne that could be had. The King withdrew himſelf, and ſent away him whom he called the Prince of *Wales* before him, that we ſhould not have him to make him King, had we had never

ſo

ſo much mind to it; and had all the Royal Family deſerted in the like manner, or had they been conveyed away from us, I ſee no reaſon why the Eſtates might not as well have choſen a new King, as if all the Royal Family had been extinct. And if this be the true State of the Caſe, as certainly it is, there can be no Diſpute, whether their Preſent Majeſties be Rightful King and Queen.

III. A Third Queſtion is, How far thoſe who are not ſatisfied in their own private Judgments, whether the late King *James* have loſt his Right, and their Preſent Majeſties are Rightfully advanced to the Throne, may own and pay their Allegiance to their Preſent Majeſties?

Now if we do but allow that this is matter of Diſpute, all Diſputes about legal Rights muſt be determined by a legal Authority; and private Subjects muſt acquieſce in ſuch Determinations, unleſs we will diſſolve Civil Societies for the ſake of ſome diſputed legal Rights. Since then the Eſtates of the Realm (who are the Higheſt Atuhority when there is no King on the Throne) have determined this Matter, private Subjects have nothing now to do with it. In Matters which concern Civil Government they muſt follow the publick Judgment, which is the Rule and Meaſure of Civil Obedience, in contradiction to their own private Opinions, where the Diſpute is only about Civil and Legal, not about Natural and Moral Rights. Private Subjects muſt own him for their King who is inveſted with the Royal Authority by the Eſtates of the Realm, to

whom alone it belongs to judge? Authoritatively about ſuch matters.

IV. But the laſt and great difficulty of all ſtill remains, *viz.* Suppoſing King *James* ſhould land in *England* with a Military Force to demand the Crown, what the Subjects of *England* are bound in Conſcience to do? Which Side they ought to take? Whether they muſt fight for the late King *James* againſt their Preſent Majeſties, or for their Preſent Majeſties againſt the late King *James*?

Now if King *James* has loſt his Crown, and his Right to it, and King *William* and Queen *Mary* are Rightfully poſſeſſed of the Throne, (which I take to be the truth of the Caſe) this will admit of no Diſpute; for it is certain we ought to fight for our Rightful King and Queen, againſt One who has been King, but is no King now, nor has any Right ever to be King again.

But there is no abſolute neceſſity of inſiſting upon Right, it is ſufficient to determine the Caſe, only to ſay, that the Laws of the Land require us to fight for our King againſt him, who is no King; and he is King whom the Laws of the Land own to be King; that is, He who is placed on the Throne, and inveſted with the Royal Authority, with all uſual and accuſtomed Solemnities by the Eſtates of the Realm. A legal Inveſtiture makes a legal King, and the Law requires our Allegiance to ſuch a King, that is, all legal Obedience and Defence

fence; and the Law is the meaſure of legal Rights. Whatever Right then any Prince may pretend to the Throne, if the Law does not allow private Subjects to take Cognizance of ſuch Rights againſt a legal Poſſeſſor, if it does not extinguiſh, yet at leaſt it limits, ſuſpends, and ſets aſide ſuch Rights in ſuch Caſes, that they are to Subjects as if they were not: And as the Law can make and create legal Rights, ſo it can limit and ſet Bounds to them, and determine in what Caſes, and to what Effect and Purpoſes they ſhall be Rights, and they are legal Rights no farther.

But beſides this, it is worth obſerving, That the Law does not allow Civil and Legal Rights to be diſputed and determined by the Sword; for that is a diſſolution of Civil Authority and Civil Government; and therefore no Subjects can be bound at any time by the Laws of the Land to fight for a ſuppoſed or pretended Right againſt a Legal Poſſeſſor. We are bound to fight for our King, to defend his Perſon, Crown, and Dignity, but it is for a King whom the Laws own to be King; that is, who is inveſted with the Royal Authority by the Eſtates of the Realm, and is actually on the Throne. According to the Fundamental Conſtitution of all Civil Societies, the Diſputes about the Legal Rights muſt be determined by the Judgment and Sentence of a Competent Authority, not by the Sword, which can decide no Queſtion, but which ſide is ſtrongeſt: An Appeal to the Sword againſt the Sentence of the laſt Authority, puts an end to the Authority of Laws, and conſequently is no part of Legal Obedience and

and Defence; and then I cannot gueſs how any Subjects ſhould be bound in Conſcience to fight for the meer Right of a Prince, (whatever Opinion he may have of his Right) againſt a Legal Poſſeſſor of the Throne; nay, it ſeems to me, that Subjects are bound in Conſcience not to do it, as much as they are bound not to fight againſt Civil Authority and Government. Nor is this to fight for Wrong, or to fight againſt Right, where ever we ſuppoſe the Right to be, for we neither fight for or againſt either; which the Laws and the very Nature of Civil Conſtitutions will not allow; but we fight for our King againſt all his Enemies at home or abroad, as the Laws of the Land require us to do.

And what Right ſoever any Prince has, when he comes to diſpute it with the Sword, Subjects may and ought to defend the Poſſeſſor againſt him, and to leave the diſpute of Right to the Judgment and Determination of a proper Tribunal: Thus the Prince of *Orange*, his preſent Majeſty, did; though he came with the Sword in his Hand, it was not to try his Cauſe by the Sword, but to referr his Cauſe to a free Parliament, and to procure ſuch a Parliament by the Sword, which nothing but the Sword could obtain.

In ſhort, when a Prince challenges his Right by the Sword, it is ſeldom ſeen, that his own contents him; if he wins his Crown, he makes himſelf Maſter alſo of his Subjects Rights; and may carve out what kind of Power or Government he pleaſes with a Conquering Sword: And therefore whatever Obliga-

ligation Subjects ſhould be ſuppoſed to lie under to the Rightful Heir, they are not bound to make him a Conqueror, which is to make themſelves Slaves, if he pleaſes: They cannot fight for his Right without fighting againſt their own, and againſt the Rights and Liberties of their Country; which is proof enough, that no Civil Conſtitution can allow of fighting for the Crown. Such things have been, and ſuch things will be; but the Queſtion is, what Subjects are bound in Conſcience in ſuch Caſes to do? And unleſs they are bound to enſlave themſelves and their Country, they can never be bound to ſuffer, much leſs to aſſiſt any Prince, whatever his Pretences be, to ſeize the Crown by Conqueſt.

This is a good Argument againſt any Prince, who will force his way to the Throne, which is already filled by the Eſtates of the Realm; but it is an unanſwerable Argument in our preſent Caſe. We know the late King *James* too well to truſt him with a Conqueſt, if we can help it; and we know the *French* King too well to receive his Troops among us, if we can keep them out; and thoſe whoſe Conſciences command them to aſſiſt the late King to Conquer their Country, need ſome other Cure than Arguments to convince them: But this has been ſo fully ſtated in the *two Letters to a Friend concerning the* French *Invaſion*, that I ſhall referr my Readers for farther Satisfaction to thoſe Letters.

*FINIS.*